

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JANICE K. BOWERS,

Petitioner,

v.

CASE NO. 2:09-CV-528
JUDGE SMITH
MAGISTRATE JUDGE KING

SHERI DUFFY, Warden,

Respondent.

OPINION AND ORDER

On July 2, 2009, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant petition for a writ of habeas corpus be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

As her sole claim for habeas corpus relief, petitioner asserts that the trial court violated due process and the Ex Post Facto Clause by imposing more than minimum consecutive terms of incarceration pursuant to a remand by the state appellate court under *State v. Foster*, 109 Ohio St.3d 1 (2006). Petitioner objects to the Magistrate Judge's rejection of this claim on the merits. She again argues that she was denied notice and fair warning of the potential sentence she faced, and that *Foster* retroactively enhanced her penalty by granting her trial judge the discretion to impose any sentence within the statutory range for the offenses of conviction, and consecutive terms of incarceration, without engaging in judicial fact finding. *See Objections*.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. This Court likewise concludes, for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, that petitioner's claim fails to warrant federal habeas corpus relief. Petitioner's objections therefore are **OVERRULED**.

Petitioner also requests the Court to grant a certificate of appealability, and *in forma pauperis* status on appeal. *See Objections*. This Court will consider petitioner's requests upon the filing of a notice of appeal and petitioner's appropriate submission of an affidavit of indigency.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT**.

/s/George C. Smith
GEORGE C. SMITH
United States District Judge